

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

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|----------------------------|---|-------------------------------------|
| Raymond Edward Chestnut, |) | Civil Action No.: 1:12-cv-00259-RBH |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| R. Thompson; Darlene Drew, |) | |
| |) | |
| Defendants. |) | |
| |) | |

Plaintiff Raymond Edward Chestnut, a federal prisoner proceeding pro se, filed this action against the above-captioned Defendants pursuant to Bivins v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 397 (1971). Defendants filed a motion to dismiss (or, alternatively, a motion for summary judgment), arguing, in part, that this action should be dismissed due to Plaintiff's failure to exhaust his administrative remedies. When Plaintiff failed to respond to the Defendants' motion, the Court ordered Plaintiff to advise the Court whether he was abandoning his action. Plaintiff then filed two motions for an extension to respond; however, he never responded. The matter is before the Court for review of the Report and Recommendation of United States Magistrate Judge Shiva V. Hodges, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of South Carolina. The Magistrate Judge recommends that the Court dismiss Plaintiff's complaint with prejudice for failure to prosecute. Alternatively, the Magistrate Judge recommends dismissal without prejudice for Plaintiff's failure to exhaust his administrative remedies.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The Court is charged with making a

de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

Neither party has filed objections to the Report and Recommendation. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The Court reviews only for clear error in the absence of an objection. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation’ ”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

After a thorough review of the record in this case, the Court finds no clear error. Accordingly, the Magistrate Judge’s Report and Recommendation is adopted and incorporated by reference. However, because Plaintiff was not required to file a response to Plaintiff’s motion for summary judgment under the Federal Rules of Civil Procedure and the Local Rules, the Court respectfully rejects the Magistrate Judge’s recommendation to dismiss Plaintiff’s complaint with prejudice. Instead, dismissal without prejudice is more appropriate. Therefore, it is

ORDERED that Defendant’s motion to dismiss [ECF No. 30] is **GRANTED** and that Plaintiff’s complaint is **DISMISSED** without prejudice.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

December 13, 2012
Florence, South Carolina